

COURT FILE NO.: CV-18-594281-0000

(Formerly Court file no.: 406/95)

DATE: 20191209

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: SIX NATIONS OF THE GRAND RIVER BAND OF INDIANS, Plaintiff

AND:

THE ATTORNEY GENERAL OF CANADA and HER MAJESTY THE QUEEN
IN RIGHT OF ONTARIO, Defendants

BEFORE: SANFILIPPO J.

COUNSEL: *Ben A. Jetten and Max Shapiro* for the Plaintiff

Owen Young, Michael McCulloch., Alexandra Colizza, Tanya Muthusamipillai and Zofia Rogonska (articled student), for the Defendant the Attorney General of Canada

Manizeh Fancy, David Tortell, Stephanie Figliomeni and Insiyah Kanvee for the Defendant Her Majesty the Queen in Right of Ontario.

HEARD: December 3, 2019

10TH CASE MANAGEMENT ENDORSEMENT

A. Background

[1] The 10th Case Management Conference in this action was conducted on December 3, 2019, in person, in accordance with paragraph 13(g) of the 9th CM Endorsement dated August 29, 2019.

B. Matters Addressed at the 9th CM Conference

Status of the Plaintiff's Ongoing Evidence Gathering through Requests to Admit

[2] The timelines set out in paragraphs 13(a) and 13(b) of the 9th CM Endorsement for the completion of the delivery by the defendants of their responses to the Plaintiff's Requests to Admit have been completed. The Plaintiff is assessing the factual issues on which there are admissions and as a precursor to an Agreed Statement of Facts, and to focus on any areas on which it seeks to conduct further discovery through any additional Request to Admit or through written interrogatories.

[3] Canada and Ontario have reserved their right to engage in further written discovery, as they are advised. The defendants are at liberty to bring forward any evidence gathering process that they consider advisable, whether in the form of Requests to Admit, written interrogatories or otherwise.

Ongoing Consideration of Efficiencies in Structuring the Action for Adjudication

[4] The Parties conducted four meetings, either jointly or bilaterally, to address alternative ways of advancing this action, in accordance with paragraph 13 (d) of the 9th CM Endorsement. The Parties reported that the meetings were productive in exploring how to separate one or two core or critical or foundational issues for trial, or an entire claim whose adjudication would guide the parties in their approach to adjudication or resolution of other claims. To date, these preliminary discussions have identified the following: (i) the availability of the accounting remedy sought by the Plaintiff, and/or; (ii) the merits of the Welland/ Feeder Canal claim.

[5] The Parties are committed to continuing this process of collaborative discussions with the target of reaching a preliminary agreement or consensus on process by the end of March 2020. They would then require time to take instructions.

C. Specific Case Management Directions

[6] I commend all parties in working effectively through the evidence gathering process involving the extensive Requests to Admit, and through collaborative discussions designed to achieve efficiency in trial structuring and management.

[7] Further to the discussions conducted at the 10th CM Conference, I provide the following specific case management directions:

- (a) The parties will continue their discussions of ways by which this action can be efficiently advanced to adjudication, with the target of reaching a preliminary agreement, or consensus amongst counsel on process, by the end of March 2020.
- (b) The parties will continue to consider the construction of charts of admitted facts, and identification of areas on which additional factual narrative must still be developed, with the objective of advancing a comprehensive agreed statement of facts for use at trial. Additionally, the parties will continue to consider and address the expert evidence that they will require at trial;
- (c) The Parties shall exchange and deliver to me, or may submit a Joint Memorandum if they are in agreement, by email to my judicial assistant by the end of day on **April 16, 2020**, a Memorandum setting out the following:
 - (i) Their submissions on the most efficient manner by which to structure and advance this case to adjudication;
 - (ii) Their proposed timetable, or schedule for advancing to completion the steps remaining to be completed to advance this case to trial, including any further evidence gathering, including any further documentary production, timing for expert reports, timing for scheduling the action down for trial, or the first part or parts of this action for trial, and pre-trial conferencing;
- (d) The Parties shall be prepared to address these issues at the next case management conference.

The Next Case Management Conference

- (e) The next case management conference will be conducted, in person, on **April 21, 2020 at 4:00 pm**, being a date convenient to all counsel and available to the Court. Counsel should be aware that, subject to the court calendar, this case management conference might be moved to slightly earlier to 3:30 pm or slightly later to 4:30 pm. The precise time and location will be notified to counsel in proximity to the next case management conference. Any party who considers that the next case management conference would more efficiently be conducted by teleconference may make that submission by April 16, 2020.

Bring Forward Items

- (f) In addition to the items specifically addressed already in this 10th CM Endorsement, the following items are recorded from discussions at past case management conferences and carried forward to a future case management conference:
 - (i) The parties understand that there will be no delay in the ongoing evidence gathering and preparation of this case for determination in its entirety while other options are being considered. As such, the defendants are at liberty to bring forward any evidence gathering process that they consider advisable, whether in the form of Requests to Admit, written interrogatories or otherwise;
 - (ii) The issue of leave to amend the current pleadings, and the timing of any such amendments;
 - (iii) The identification of areas or issues on which expert evidence may be adduced, and the timing of the retention of any such experts;
 - (iv) Any other issue that any party considers necessary for the efficient development of this action for adjudication, in whole or in part.

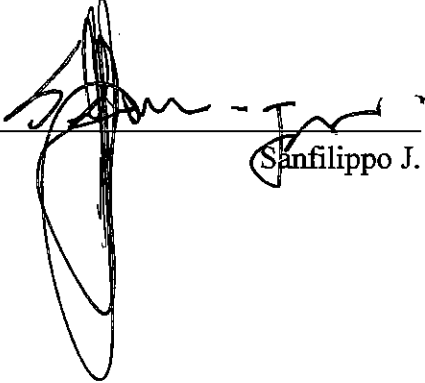
D. General Case Management Directions

[8] Any party who seeks to address an issue identified in this action between now and the next scheduled case conference of **April 21, 2020** and who considers that a case conference would assist in expeditious and efficient handling of any such issue, may request the scheduling of a further case conference by email to my judicial assistant, having first canvassed with all counsel their availability for such a case management conference.

[9] No motion may be brought in this action before being considered at a case conference.

[10] Broad application of Rule 50.13 will be used to address and resolve matters raised at case conference, in circumstances where this is possible. Counsel ought to expect that procedural orders and directions will be made at case conferences, in accordance with Rule 50.13(6), on informal notice of the issue to be addressed.

[11] The requirement of preparation, issuance and entry of a formal order is hereby dispensed with in accordance with Rule 77.07(6).



Sanfilippo J.

Date: December 9, 2019